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Appeal of the Legal Experts Group at the Stefan Batory Foundation to the President of the Republic of Poland regarding the new bill on the Constitutional Tribunal passed by Parliament

The Parliament completed the process to pass new constitutional tribunal legislation on the 22 July 2016. Despite vast criticism by eminent public figures the new law has not only ignored these concerns entirely but stands in glaring contradiction to the recommendations made by the Venice Commission in March 2016. Moreover, it disregards the rulings of the constitutional court. Specifically, the new legislation forces the President of the Constitutional Tribunal to mandate the judicial powers to the three individuals elected in December 2015 to replace those elected earlier in October 2015. Moreover, the new law prohibits the publication of the Constitutional Tribunal's ruling of 9 March 2016, which is in violation of a clear instruction in the Polish Constitution and in defiance of the Venice Commission's recommendations made strictly within the Polish legal framework. While pushing for these clearly unconstitutional arrangements the legislature demonstrates its resolve to intentionally violate the Polish Constitution and go against the fundamental principles of collaboration, division and balance of the legislative, executive and judiciary powers.

On top of provisions that had earlier been declared unconstitutional by the Constitutional Tribunal the Parliament has now adopted an unprecedented concept of a minority veto against rulings that have gained the support of the majority of the ruling judges. This arrangement is in breach of the constitutional principle of majority vote rulings in the Constitutional Tribunal. This will now allow a group of judges to block the Constitutional Tribunal's rulings even though they have received support from the majority of judges. When combined with the mandate for individuals elected to already filled judge positions (and supported by the current parliamentary majority) this arrangement raises a major concern as to the motivations behind this piece of legislation.

The unprecedented statutory provision that grants ruling powers to individuals who have been appointed judges in breach of the Constitution, the minority veto, the new rules for the

selection of the Constitutional Tribunal President and the new rules on determining disciplinary liability of judges effectively give the current parliamentary majority full control over the Constitutional Tribunal. The new provisions are in breach of the rule of constitutional court independence, which implies a major threat to the rule of law.

All the defects of the newly passed legislation listed above make the earlier major concerns raised by the Legal Experts Group at the Stefan Batory Foundation still very topical (see the Statement on the draft Constitutional Tribunal Law Sejm Paper No 693 from July 6, 2016). Contrary to publicly announced intention of the parliamentary majority to develop provisions that would end the crisis over the Constitutional Tribunal the new legislation not only fails to end the crisis but makes it even deeper.

Therefore, we appeal to the President of the Republic of Poland to refuse to sign the bill and to refer it to the Constitutional Tribunal under the preventive control provisions in Article 122 Paragraph 3 and 5 of the Constitution. We expect that, being the steward of the Constitution, the President of the Republic of Poland will choose to use his mandate to protect the significant constitutional values that are the cornerstones of the rule of law.

The Stefan Batory Foundation's Legal Experts Group:

- Łukasz Bojarski, President of the INPRIS Institute of Law and Society
- Jacek Czaja, President of the Legal Society
- Piotr Kładoczny, Assistant Professor at the Department of Law and Administration, University of Warsaw, Board Member of the Helsinki Foundation for Human Rights
- Marcin Matczak, lecturer at the Faculty of the Philosophy Law and State Governance, University of Warsaw, partner at Domański Zakrzewski Palinka law firm
- Tomasz Pietrzykowski Ph.D , lecturer at the Faculty of the Theory and Philosophy of Law, Department of Law and Administration, Silesian University in Katowice
- Fryderyk Zoll – profesor at the Jagiellonian University in Kraków and the University of Osnabrück, Germany